

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

MURLI DATWANI,

Defendant.

Criminal No. 00-851 (JAF)

IN RE \$4,233,069 IN PROCEEDS.

OPINION AND ORDER

Claimants, Hiromo Yamamoto and Beach Investment Corporation ("BIC"), petition this court for the release of proceeds from the sale of certain real property in Florida. Docket No. 161. Respondent, the United States of America ("the government"), seized the property in connection with the prosecution of Defendant, Murli Datwani. Id. Respondent opposes the petition. Docket No. 164. Claimants reply. Docket No. 167.

I.

Factual and Procedural Summary

On January 24, 2001, the government indicted Defendant for fifty-five counts of money laundering on behalf of a narcotics trafficking ring and one count of conspiracy to commit money laundering in violation of 18 U.S.C. §§ 1956-57. Docket No. 161. The indictment included a count for forfeiture of proceeds up to at least \$4,233,069 pursuant to 18 U.S.C. § 982 and 21 U.S.C. § 853. Id. In connection with the indictment, the government recorded a lis pendens

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1 in Dade County, Florida, against certain real property located at 30A
2 Indian Creek Drive in Indian Creek, Florida, on January 24, 2001.
3 Docket Nos. 120, 128. The government alleged that Defendant was the
4 beneficial owner of this property at the time of his indictment,
5 despite the fact that he was no longer the official owner on record.
6 Docket Nos. 128, 164. The record owner of the property was BIC, a
7 Panamanian company, which held the property in trust for the benefit
8 of Yamomoto, a Japanese national, via Lunamar Zona Libre S.A., a
9 Panamanian company. Docket Nos. 161, 164.

10 On September 13, 2006, Claimants and Masayuki Naemura, a
11 Japanese national, moved to vacate the lis pendens to permit the sale
12 of the property and sequester \$4,233,069 in proceeds from the sale as
13 substitute assets pending ultimate forfeiture proceedings. Docket
14 No. 133. We granted the motion on September 25, 2006. Docket No. 139.
15 Claimants and Naemura subsequently sold the property and deposited
16 the stipulated sum with this court on March 12, 2008. Docket No. 158.
17 To date, Defendant remains a fugitive, and the government has not
18 prosecuted him for the charged offenses. Docket Nos. 161, 167. Thus,
19 formal forfeiture proceedings have yet to commence with respect to
20 the proceeds. Id.

21 On December 15, 2008, Claimants lodged a bill in this court
22 seeking a hearing to determine the ownership of the real property and
23 for the release of proceeds from the judicially-sanctioned sale.
24 Docket No. 161. The government opposed on January 14, 2009. Docket
25 No. 164. Claimants replied on January 21, 2009. Docket No. 167.

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II.

Analysis

Claimants contend that they are interested third-parties to this case who were the rightful owners of the real property and, hence, are entitled to recover the proceeds from the sale.¹ Docket Nos. 161, 167. The government maintains, however, that Claimants are, in fact, acting on behalf of Defendant and are, thus, not entitled to the proceeds. Docket No. 164. Claimants further argue that we should apply United States v. Paris-López to liberate the proceeds in this case. See 111 F. Supp. 2d 100, 102 (D.P.R. 2000) (citing United States v. \$8,850 in U.S. Currency, 461 U.S. 555 (1983)). We disagree, because we find that Paris-López is distinguishable from this case.

Where a defendant is indicted for drug-related offenses, the government may apply for a protective order "to preserve the availability of property" that may be subject to forfeiture upon the defendant's conviction. 21 U.S.C. § 853(e)(1)(A). Ordinarily, third-

¹ Claimants do not specify whether they seek redress by means of an action at law or equity, or intervention under Federal Rule of Civil Procedure 24. See Docket No. 161. While there is no statutory authority for pre-forfeiture relief, see generally 21 U.S.C. § 853, we characterize Claimants' petition as a bill in equity.

Federal common law permits third-parties to lodge a bill in federal court prior to forfeiture proceedings to adjudicate the legality of the seizure. Slocum v. Mayberry, 15 U.S. 1, 9-10 (1817). This remedy exists in the absence of federal statutes on point. See id.; see also \$8,850, 461 U.S. at 569 (noting that equitable actions under Slocum are available). "If the seizing officer should refuse to institute proceedings to ascertain the forfeiture, the district court may, upon the application of the aggrieved party, compel the officer to proceed to adjudication, or to abandon the seizure." Slocum, 15 U.S. at 10.

Whether Claimants' petition is properly labeled as an equitable action or an intervention is irrelevant, however, as both are barred by 21 U.S.C. § 853(k). DSI Assocs. LLC v. United States, 496 F.3d 175, 183-84 (2d Cir. 2007); see infra discussion of § 853(k) as jurisdictional bar.

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1 parties interested in the seized assets may not intervene until after
2 the court issues an order of forfeiture, § 853(k), (n), which follows
3 the defendant's conviction in the principal criminal case, § 853(a).

4 Section 853 specifically bars third-parties from "commenc[ing]
5 an action at law or equity against the United States concerning the
6 validity of [their] alleged interest in the property subsequent to
7 the filing of an indictment." 21 U.S.C. § 853(k). While third-parties
8 may not challenge the ultimate forfeitability of assets seized under
9 § 853, they may ask the court to modify the restraint of their assets
10 in proceedings related to the protective order under § 853(e).² See
11 United States v. Real Property in Waterboro, 64 F.3d 752, 755-56 (1st
12 Cir. 1995).

13 The First Circuit has not decided whether the bar under § 853(k)
14 is jurisdictional. See id. at 755 n.1. However, other circuits have
15 apparently imposed the restriction as a jurisdictional bar. See,
16 e.g., DSI Assocs. LLC v. United States, 496 F.3d 175, 183-84 (2d Cir.
17 2007) (barring intervention under Fed. R. Civ. P. 24); Roberts v.
18 United States, 141 F.3d 1468, 1469-71 (11th Cir. 1998) (barring, sua
19 sponte, claim under Fifth Amendment). Moreover, we must construe
20 § 853 liberally to effectuate its stated purpose of securing property
21 for eventual forfeiture. 21 U.S.C. § 853(o); United States v.

² Our prior order lifting the lis pendens obeyed the rule in Waterboro. Docket No. 139. We modified the restraint at Claimants' behest to permit them to sell the property and reap profits in excess of the value that the government seeks to forfeit. See id. We, thus, struck a balance between the need to alleviate harm to Claimants and the admonition to preserve assets for forfeiture. See United States v. Monsanto, 491 U.S. 600, 613 (1989).

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1 Monsanto, 491 U.S. 600, 613 (1989). As the prohibition appears
2 absolute and prevents premature interference with forfeiture, we hold
3 that the bar is jurisdictional and precludes a complaint under
4 Slocum. As federal courts have an independent duty to assess their
5 own subject-matter jurisdiction, Arbaugh v. Y & H Corp., 546 U.S.
6 500, 514 (2006), we must apply § 853(k), sua sponte, if the
7 restriction is relevant to a case.

8 In Paris-López, the third-party claimants challenged the
9 temporal scope of a protective order in a hearing to modify that
10 order. United States v. Paris-López, No. 98-189, 2000 U.S. Dist.
11 LEXIS 12841, at *3-4 (D.P.R. May 12, 2000). As in this case, the
12 seizure was pursuant to the defendant's indictment for drug-related
13 offenses, and was of indefinite duration because the defendant
14 remained a fugitive at large. Id. After adopting the magistrate's
15 recommendation for a modified restraint of assets, the district court
16 ordered the release of the assets in toto as relief. Paris-López, 111
17 F. Supp. 2d at 103.

18 Although the district court opinion set out the contours of
19 equitable relief where the government tarries in prosecuting
20 forfeitures, id. at 100-03, that case arose from petitions to modify
21 the protective order under § 853(e), Paris-López, 2000 U.S. Dist.
22 LEXIS 12841, at *3, rather than challenges to the pending forfeiture.
23 Accordingly, the court had no occasion to consider the applicability
24 of § 853(k). See generally Paris-López, 111 F. Supp. 2d at 100-03.

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1 In the case at bar, Claimants submit that they are interested
2 third-parties to Defendant's criminal case, and adjudication of
3 forfeiture remains impossible by dint of Defendant's evasion of
4 justice. Docket Nos. 161, 167. Claimants request an early
5 adjudication of the underlying ownership of the sequestered proceeds
6 and the legality of the pending forfeiture itself. See id. As noted
7 above, Paris-López affords no relief from § 853(k) as it pertains
8 only to proceedings under § 853(e). We, therefore, bar this complaint
9 under the express language of 21 U.S.C. § 853(k).

10 **III.**

11 **Conclusion**

12 Accordingly, we hereby **DENY** Claimants' motion for a hearing to
13 adjudicate ownership and release proceeds, Docket No. 161. We **DISMISS**
14 Claimants' bill in equity **WITH PREJUDICE**.

15 **IT IS SO ORDERED.**

16 San Juan, Puerto Rico, this 8th day of April, 2009.

17 s/José Antonio Fusté
18 JOSE ANTONIO FUSTE
19 Chief U.S. District Judge